IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL
WRIT PETITION No. 38 (S/S) OF 2002
(Misc. Application No. 3302 of 2006)

Tapas Kumar Saha S/o Sri K.C. Saha
R/o Quarter No. A-2205
Indian Drugs and Pharmaceuticals
Pvt. Ltd. Virbhadra, Rishikesh ……Petitioner

Versus

1. Union of India through Secretary, Rashyan, New Delhi.
2. General Manager, Indian Drugs and Pharmaceuticals Pvt. Ltd., Virbhadra, Rishikesh.
3. Senior Personnel Manager, Indian Drugs and Pharmaceuticals Pvt. Ltd., Virbhadra, Rishikesh. ……Respondents

27.03.2006

Sri D.S. Patni, learned counsel for the petitioner.
Sri V.K. Bisht, Senior Learned counsel for the respondents.

Hon'ble Rajesh Tandon, J.

Heard Sri D.S. Patni, Counsel for the petitioner and Standing Counsel for the respondents.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the impugned order dated 18/19.12.2001 passed by the respondent No.2. Petitioner has further prayed for a writ of mandamus directing to the respondents not to given effect to the order dated 18/19.12.2001 passed by respondents No. 1.

Briefly stated, petitioner is a registered Pharmacists and he has duly completed 36 weeks of Refresher Course in Pharmacy from Pharmacy Technological Institute Hogli, West Bangal on 01.07.1979 and also obtained Diploma in Medical Laboratory Technology in the year 1980. He was appointed as Pharmacist on ad-hoc basis on 15.04.1981 in I.D.P.L., Rishikesh and services of the petitioner was extended on ad-hoc basis from time to time and the petitioner has applied for selection for the post of Pharmacist in I.D.P.L., Rishikesh and he appeared for interview on 26.07.1982. The petitioner was appointed on the post of Pharmacist in the pay scale of Rs. 410-690

by the respondent No. 3 vide order dated 03.11.1982. Further he was promoted to the post of Senior Pharmacist vide order dated 26.02.1991.

Petitioner has submitted that on 27.12.1996, he was handed over a chargesheet stating therein that in the biodata he has stated having obtained the Diploma in Pharmacy and on enquiry it was revealed that he has not passed diploma in pharmacy.

In this connection, the Personnel Manager, I.D.P.L. after the enquiry, he was awarded the punishment by stoppages of annual increments with cumulative effect. Thereafter, petitioner was promoted on the post of Master Pharmacist on 10.09.1998. It is pertinent to mention that F.I.R. was lodged by the respondent on 16.08.2000 in Police Station, Rishikesh and Criminal case No. 6 M of 2001 was initiated u/s 420 I.PC. before the Civil Jude (Jr. Div.), Rishikesh. Civil Judge (Jr. Div.) who closed the file of the said case on the basis that there was no substantive constituent against the petitioner to punish hmm u/s 420 IPC vide order dated 09.01.2001.

On 17.01.2002, the petitioner was served an order dated 18/19.12.2001 to show cause why he should not be dismissed from his service for committing fraud and also was required to reply within 15 days.

On 17.1.2002, the petitioner replied the show cause notice and categorically stated that he had inadvertently stated having obtained the Diploma in Pharmacy instead of Certificate in Diploma, the same may be condoned. It is abundantly clear that on the same set of charges petitioner has been awarded with stoppage of 2 increments with cumulative effect, as such the impugned order cannot be allowed to proceed on the same charges thus is liable to be quashed.

Counter Affidavit has been file by the respondents wherein it has been sated that the show cause notice has been given to the

petitioner as to why he should not be dismissed from the service of the company. The I.D.P.L. has made rules for the Conduct, Discipline and Appeal Rules of 1978. Rule 33 of the same is being quote below:

"Notwithstanding anything contained in these Rules:-

(i) The Board may call for the records of any case and after reviewing of the case pas such orders thereon as it may deem fit. The order of the Board shall not be subject to any further review.

(ii) Any other reviewing authority, including functional Directors exercising the authority, may call for the record of the case within one year of the date of the final order and after reviewing the case pass such orders thereon as it may deem fit.

Provided that if the enhanced penalty, which the reviewing authority proposes to impose, is a major penalty specified in clauses (e) (f) and (g) of Rules 23 and an enquiry as provided under rule 25 has not already been held in the case. The reviewing authority shall direct that such an enquiry be held in accordance with the provisions of Rules 25 and thereafter consider the record of the enquiry and pass such order as may deem proper.

It the Appellate Authority decides to enhance the punishment but an enquiry has already been held in accordance with the provisions of rule 25, the reviewing authority shall give show cause notice to the employee as to why the enhanced penalty should not be imposed upon him. The reviewing authority shall pass final order after taking into account the representation, if any, submitted by the employee."

The short grievance of the petitioner as had also applied Voluntary Retirement Scheme which was floated vide circular dated 20.9.2002, In pursuance of the said circular the petitioner has

applied through proper channel for the voluntary Retirement under Gujarat Pattern Scheme on dated 12.11.2002. Petitioner has submitted that only show cause notice was sent in the year 2001 thereafter no other action/notice sent to him.

In view of the above, Respondents are directed to pass an appropriate order considering the voluntary retirement under Gujarat Pattern Scheme within a period of three months from the date of production of certified copy of this order in accordance with Law.

Consequently, writ petition is disposed of. No order as to costs.

27.03.2006 **(Rajesh Tandon, J.)**

Jain